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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

Christine Whalen, et al.,

Plaintiffs,

v.

Kroger Co., Albertsons Companies, Inc., and  
Cerberus Capital Management, L.P.,

Defendants.

Case No. 3:23-cv-00459-vc

**REQUEST FOR JUDICIAL NOTICE IN  
SUPPORT OF DEFENDANT  
ALBERTSONS COMPANIES, INC.'S  
MOTION TO DISMISS**

Date: May 18, , 2023  
Time: 10:00 a.m.  
Place: Courtroom 4 - 17th Floor  
Judge: Hon. Vince Chhabria

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 Pursuant to Federal Rule of Evidence 201, Defendant Albertsons Companies, Inc.  
3 (“Albertsons”) hereby respectfully requests that the Court take judicial notice of the documents  
4 listed below. A true and accurate copy of these documents are attached as exhibits to the  
5 accompanying Declaration of Edward D. Hassi in Support of Defendant Albertsons’ Motion to  
6 Dismiss.  
7

- 8 1. **Exhibit A:** Albertsons’ Form 10-K for Fiscal Year 2021, filed with the Securities and  
9 Exchange Commission (“SEC”) on April 26, 2022.
- 10 2. **Exhibit B:** Albertsons’ Form 8-K, filed with the SEC on April 11, 2023.
- 11 3. **Exhibit C:** Albertsons’ Schedule 14C Information Statement, filed with the SEC on  
12 January 24, 2023.
- 13 4. **Exhibit D:** Albertsons’ Form 8-K, filed with the SEC on October 14, 2022, along  
14 with its Exhibit 2.1, the Merger Agreement between Albertsons and Kroger.
- 15 5. **Exhibit E:** Complaint filed in the District Court for the District of Columbia on  
16 November 2, 2022, in *District of Columbia v. The Kroger Co.* (hereinafter, the  
17 “D.D.C. Litigation”), No. 1:22-cv-03357-CJN (D.D.C.).
- 18 6. **Exhibit F:** Complaint filed in the King County Superior Court on November 1, 2022,  
19 in *Washington v. The Kroger Co.*, Case No. 22-2-18046-3 SEA (Wash. Super. Ct.).
- 20 7. **Exhibit M:** Notice from Plaintiffs in the D.D.C. Litigation voluntarily dismissing the  
21 Complaint, filed on February 24, 2023.
- 22 8. **Exhibit N:** Plaintiffs’ [Redacted] Memorandum of Law in Support of Motion for a  
23 Preliminary Injunction in the D.D.C. Litigation, filed on December 1, 2022.
- 24 9. **Exhibit O:** Albertsons’ Form 10-Q, filed with the SEC on October 19, 2022.
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- 26
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1 Because the authenticity of these documents is not subject to reasonable dispute, the court  
2 may take judicial notice of and consider them in connection with Albertsons' motion to dismiss. *See*  
3 *Northstar Fin. Advisors, Inc. v. Schwab Invs.*, 781 F.Supp.2d 926, 942 (N.D. Cal. 2011),

4 When reviewing a motion to dismiss for failure to state a claim, "courts must consider the  
5 complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule  
6 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference,  
7 and matters of which a court may take judicial notice." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*,  
8 551 U.S. 308, 322 (2007).

9 "It is well-established that courts may take judicial notice of SEC filings." *In re New*  
10 *Century*, 588 F. Supp. 2d 1206, 1219 (C.D. Cal. 2008) (citing *Dreiling v. Am. Express Co.*, 458 F.3d  
11 942, 946 n.2 (9th Cir. 2006)); *see also In re Copper Mountain Sec. Litig.*, 311 F. Supp. 2d 857, 864-  
12 64 (N.D. Cal. 2004) (taking judicial notice of various SEC filings). Exhibits A, B, C, D, and O are  
13 all public SEC filings that are "central" to Plaintiffs' claims and "not subject to reasonable dispute"  
14 and thus properly subject to judicial notice. *In re New Century*, 588 F. Supp. 2d at 1219 (citations  
15 omitted).

16 Moreover, "[c]ourts may take judicial notice of public records, including court records from  
17 another case." *Almont Ambulatory Surgery Ctr., LLC v. UnitedHealth Grp. Inc.*, 99 F. Supp. 3d  
18 1110, 1125 (C.D. Cal. 2015) (citing *United States v. Howard*, 381 F.3d 873, 876 n.1 (9th Cir. 2004)).  
19 The remainder of the documents listed above—Exhibits E, F, M, and N—are publicly-filed court  
20 records in cases raising substantially similar allegations and seeking to enjoin the special dividend  
21 payment, and are likewise properly the subject of judicial notice.

## 22 CONCLUSION

23 For the foregoing reasons, Albertsons respectfully requests that the Court take judicial notice  
24 of the documents listed above and consider them in connection with Albertsons' pending motion to  
25 dismiss.  
26

1 Dated: April 12, 2023

Respectfully submitted,

2 By: /s/ Edward D. Hassi  
3 Edward D. Hassi (*pro hac vice*)

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17 *Attorneys for Defendant Albertsons Companies,*  
18 *Inc.*

**CERTIFICATE OF SERVICE**

The undersigned certifies that on April 12, 2023, the foregoing document was filed with the Clerk of the U.S. District Court for the Northern District of California, using the court's electronic filing system (ECF), in compliance with Civil L.R. 5-1. The ECF system serves a "Notice of Electronic Filing" to all parties and counsel who have appeared in this action, who have consented under Civil L.R. 5-1 to accept that Notice as service of this document.

Dated: April 12, 2023

/s/ Edward D. Hassi  
Edward D. Hassi (*pro hac vice*)